

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

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**MDL No. 1456
Master File No. 01-CV-12257-PBS
Subcategory Case No. 06-11337
Hon. Patti B. Saris**

THIS DOCUMENT RELATES TO:

*United States of America ex rel. Ven-A-Care of the
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
Civil Action No. 05-11084-PBS

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**Magistrate Judge
Marianne B. Bowler**

**DEY DEFENDANTS' MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND RULE 30(b)(6) DEPOSITION OF
COLORADO DEPARTMENT OF HEALTH CARE AND FINANCING**

Pursuant to Rules 37 and 45 of the Rules of Civil Procedure and Rule 37.1 of the Local Rules of this Court, Defendants Dey, Inc., Dey L.P., and Dey L.P., Inc. (collectively, "Dey") move to compel compliance with a subpoena *duces tecum* and a subpoena for Rule 30(b)(6) deposition testimony served the Colorado Department of Health Care and Financing ("Colorado"), the department that oversees the Colorado Medicaid program, more than five months ago. Since the service of the subpoenas, Dey has attempted to work with Colorado to address Colorado's stated concerns about the scope of the subpoena. After Dey negotiated in good faith for months, in November Colorado unilaterally advised Dey that it would not produce documents or present a witness and advised that it would seek a protective order, but has not done so. Colorado's refusal to comply with its discovery obligations or to seek relief from this Court is not justified. Dey therefore respectfully requests that Colorado be compelled to comply with the subpoenas.

Dey requests that the Court enter an order compelling the Colorado Department of Health Care and Financing to produce all documents in its possession responsive to Dey's subpoena *duces tecum*, and make a designation under Rule 30(b)(6) for its representative(s) to testify on all of the topics listed in the deposition subpoena within a reasonable time frame as determined by the Court.

**CERTIFICATION OF COMPLIANCE
WITH LOCAL RULES 7.1(A)(2) and 37.1**

Pursuant to Local Rule 7.1(A)(2), undersigned counsel hereby certifies that my colleague Marisa Lorenzo contacted counsel for the State of Colorado on multiple occasions in a good faith effort to resolve or narrow the issues presented by this motion, but to no avail.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Dey requests oral argument on the issues raised in this Motion, which it believes will assist the Court in deciding this motion and request an opportunity to present one.

Dated: December 15, 2008

Respectfully Submitted,

KELLEY DRYE & WARREN LLP

By: /s/ Neil Merkl
Paul F. Doyle (BBO # 133460)
Sarah L. Reid (*pro hac vice*)
William A. Escobar (*pro hac vice*)
Neil Merkl (*pro hac vice*)
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

*Attorneys for Defendants Dey, Inc.
Dey, L.P., and Dey, L.P., Inc.*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on December 15, 2008, a copy to LexisNexis File and Serve for posting and notification to all parties. I further certify that on December 15, 2008, the foregoing was served by overnight and electronic mail, addressed to the following:

Robert Douglas, Esq.
Mary Karen Maldonado, Esq.
State of Colorado Department of Law
1525 Sherman Street
Denver, CO 80203

By: /s/ Neil Merkl
Neil Merkl